

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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JAMES J. PIPER,

Plaintiff,

vs.

CAROL POPPE,

Defendant.

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) No. 08-CV-546  
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)  
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**STIPULATION OF DISMISSAL PURSUANT TO FRCP 41(a)(1)(A)(ii)**

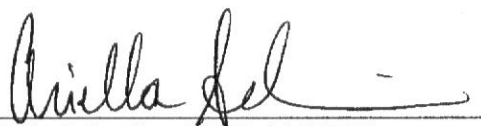
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TO: All Counsel

PLEASE TAKE NOTICE that James Piper, Plaintiff, dismisses this action **with prejudice**, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). Attached as **Exhibit A** is a copy of the Settlement Agreement and General Release signed by all parties.

Dated at Madison, Wisconsin this 8th day of October, 2008.

WINNER, WIXSON & PERNITZ

By:   
Ariella Schreiber (SBN: 1057013)  
Robert G. Wixson (SBN: 01014930)  
Attorneys for Carol Poppe

22 East Mifflin Street, Suite 702  
P.O. Box 2626  
Madison, WI 53701-2626  
608/257-0257  
608-257-0078 - FAX

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Agreement") is entered into by and between James Piper ("PIPER") and Carole Poppe ("POPPE").

The term "Effective Date" shall refer to the date the Agreement is signed by PIPER and POPPE, on which date this Agreement becomes effective and binding.

**RECITALS**

WHEREAS, on August 11, 2008, PIPER filed a Complaint in the Small Claims Court, State of Wisconsin, Circuit Court of Dane County asserting that he was owed certain monies in connection with a knee surgery that was insured by New World Restaurant Group, Inc., and for which he claimed POPPE was responsible;

WHEREAS, the case was removed to the United States District Court, Western District of Wisconsin on September 17, 2008;

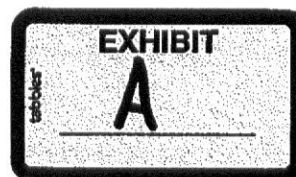
WHEREAS, POPPE denies all material allegations alleged in the Complaint;

WHEREAS, PIPER and POPPE seek to amicably resolve and settle any and all existing and/or potential claims and/or dispute of any nature which PIPER may have against POPPE and her employer.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained herein, the parties agree as follows:

1. PIPER will cause to be dismissed with prejudice the Complaint which is currently before the United States District Court, Western District of Wisconsin, Case No. 08-CV-546. Each party will bear their own costs and attorney's fees. PIPER agrees to execute and file the form Dismissal attached hereto as Exhibit "A."

2. Within five (5) business days of the Dismissal of the Complaint, POPPE or her



employer will cause to be paid to Dean Health System the amount allegedly due and owing for PIPER'S 2006 knee surgery in the amount of \$1149.34. Additionally, within five (5) business days of the Dismissal of the Complaint, POPPE or her employer will caused to be paid to PIPER a gross lump sum in the amount of \$122.79 the equivalent of PIPER'S filing fee and service of process fees.

3. Except for claims arising out of this Agreement, PIPER hereby releases and forever discharges POPPE, New World Restaurant Group, Inc., now know as Einstein Noah Restaurant Group, Inc., with their parents and related entities and the past, present and future owners, trustees, shareholders, fiduciaries, investors, donors, administrators, agents, directors, officers, employees and attorneys, and the predecessors, successors, and assigns of each of them (the "Company Released Parties") from and for any and all claims, whether known or unknown, which he now has, has ever had, or may have in the future against the Company Released Parties which arose from the beginning of time up to the date of the execution of this Agreement.

#### **REPRESENTATIONS AND ACKNOWLEDGMENTS**

4. PIPER expressly warrants and represents that he has not transferred or assigned to any other person, firm or corporation or other legal entity any claims, rights, or causes of action which he might have against the Company Released Parties.

5. PIPER hereby covenants and represents that he has not brought, and will not bring, any legal or administrative action for damages against the Company Released Parties in connection with the matters being released by this Agreement.

6. PIPER and POPPE hereby acknowledge that no other party nor any agent or attorney of any other party has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein concerning the subject matter hereof to



induce him or it to execute this Agreement. Each of the parties further acknowledges that they have not executed this Agreement in reliance on any promise, representation or warranty not contained herein.

#### **MISCELLANEOUS TERMS**

7. In the event that either of the parties must resort to legal action in order to enforce any provision or right under this Agreement or to defend such suit, the prevailing party shall be entitled to receive reimbursement from the nonprevailing party or parties for all reasonable attorneys' fees and costs incurred in the litigation of such suit.

8. This Agreement effects the settlement of potential claims and disputes and nothing contained herein shall be construed as an admission by POPPE of any wrongdoing of any kind.

9. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and all prior negotiations, agreements, understandings, written or oral, between the parties are deemed superseded and are replaced hereby. No provision may be changed, waived or modified, except in writing, signed by the parties hereto.

10. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of Wisconsin applicable to instruments, persons and transactions which have legal contacts and relationships solely within the State of Wisconsin.

11. This Agreement may be executed in counterparts, and a facsimile signature will have the same force and effect as an original signature penned in ink. When each of the necessary parties has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and when taken together with other signed counterparts, it shall constitute

FROM : JAMES J PIPER

FAX NO. : 1-608-836-4004

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one fully-executed agreement which shall be binding upon and effective as to all the parties.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year written below.

Dated: September 30, 2008

JAMES PIPER

By: *James J. Piper*  
JAMES PIPER

Dated: September 30, 2008

CAROLE POPPE

By: *Carole Poppe*  
CAROLE POPPE

*approved this 15<sup>th</sup> day of October, 2008*  
*By: *[Signature]*, District Judge*